

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7701

Investigation into the Complaint of Mark Tucker)
Concerning Cellco Partnership, d/b/a Verizon Wireless's,)
INpulse Prepaid Wireless Telephone Service Plan)

Order entered: 1/13/2011

**ORDER OPENING INVESTIGATION
AND NOTICE OF PREHEARING CONFERENCE**

I. INTRODUCTION

On July 14, 2010, Mark Tucker filed a letter (the "Tucker Letter") with the Public Service Board ("Board") detailing certain grievances regarding his contract with Cellco Partnership, d/b/a Verizon Wireless ("Verizon Wireless" or the "Company") for a service offering known as the "INpulse Plan" — a prepaid commercial mobile radio service plan. Toward the end of June of 2010, Mr. Tucker's INpulse service term expired. At that time, he had a balance of approximately \$70.00 in his account. Mr. Tucker did not make the additional, minimum deposit to his account that would have been due on June 28, 2010, in order to keep his INpulse service active. Consequently, Verizon Wireless "zeroed out" Mr. Tucker's \$70.00 balance and disconnected his INpulse service.

The Tucker Letter was accompanied by numerous documents reflecting Mr. Tucker's unsuccessful efforts to date to informally resolve his dispute with Verizon Wireless.¹ The Tucker Letter also included a request for a hearing before the Board to obtain a ruling "on the validity" of what Mr. Tucker describes as the "confiscatory policy" contained in the INPulse Plan. In the event of a favorable ruling from the Board, Mr. Tucker further requested an order directing Verizon Wireless to reinstate his INpulse account balance.

On October 25, 2010, the Deputy Clerk of the Board sent a letter to Mr. Tucker advising that the Board's jurisdiction over commercial mobile radio service is limited by federal law to

1. These attached documents consisted of two letters from Verizon Wireless to Mr. Tucker.

regulating the "terms and conditions" offered by companies such as Verizon Wireless, and that Mr. Tucker's complaint could not be acted upon by the Board because it appears to concern the "rates" he is being charged for taking service under the INpulse Plan — a subject matter that is reserved exclusively for federal regulation. The Deputy Clerk of the Board therefore suggested that Mr. Tucker contact the Federal Communications Commission or the Vermont Attorney General's Office for assistance with his concerns.

On November 2, 2010, Mr. Tucker filed another letter with the Board arguing that his dispute with Verizon Wireless should be viewed as a complaint about the fairness of the "terms and conditions" of the INpulse Plan because he is challenging the compliance of Verizon Wireless's INpulse Plan with the Company's "pay when you use it" advertising. According to Mr. Tucker, Verizon Wireless's practice of requiring INpulse customers to make additional, minimum deposits in order to extend the term of their service contracts is inconsistent with the Company's advertised claim that INpulse customers only pay for service on the days when they use their INpulse cell phones to place calls. Finally, Mr. Tucker stated that he has been advised by the Vermont Attorney General's Office and the Federal Communications Commission that "there is nothing they can do."

Pursuant to § 208 of Title 30, "a complaint to the public service board may be made against a company . . . concerning any claimed unlawful act or neglect adversely affecting the complainant" Therefore, we will treat the Tucker Letter as a complaint filed pursuant to § 208 alleging that Verizon Wireless has committed an unlawful act that has adversely affected Mr. Tucker.

Pursuant to § 209(a)(3) of Title 30, the Board has jurisdiction to hear, determine, render judgment and make orders concerning the manner in which a utility subject to its jurisdiction operates and conducts its business. In turn, this jurisdiction has been partially preempted by the federal Telecommunications Act, which provides that the Board has jurisdiction to regulate the "terms and conditions" of services offered by commercial mobile radio service providers, but not the "rates" these companies charge for their services.² Thus, while the Board neither regulates the rates nor market-entry terms of commercial mobile radio service providers, the Board has the

2. 47 U.S.C. §332(c)(A)(3).

authority to ensure that Vermont consumers are afforded adequate protections and are served pursuant to reasonable terms and conditions.³

At this time, based on the allegations in the Tucker Letter and the attached documents, it remains unclear whether Mr. Tucker's complaint is more appropriately characterized as a dispute regarding the "terms and conditions" or the "rates" offered by Verizon Wireless under the INpulse Plan. Therefore, we have concluded that it would be appropriate to develop an evidentiary record to resolve whether sufficient predicate facts exist to support an assertion of our jurisdiction in this case. Our decision to undertake this jurisdictional inquiry is based on Mr. Tucker's representation that the Federal Communications Commission has declined to provide a forum for hearing his claim.

We hereby open an investigation into Mr. Tucker's complaint against Verizon Wireless concerning its INpulse Plan. Initially, this investigation will be limited to examining whether the Board has the requisite jurisdiction to consider and grant any relief in regard to Mr. Tucker's complaint. We direct the Hearing Officer to prepare a proposal for decision on this initial jurisdictional issue. If we ultimately conclude that this Board may assert jurisdiction over Mr. Tucker's complaint, we will then direct the Hearing Officer to conduct further proceedings to consider whether Verizon Wireless should be ordered to undertake any remedial action, including the reinstatement of Mr. Tucker's account balance as of June 28, 2010.

3. See Docket 5808, *Joint Petition for the transfer of control of NYNEX Mobile of Vermont Inc.*, Order of 3/1/00. See also CPG No. 698-CM, *Petition of NYNEX Mobile Limited Partnership 1 for a certificate of public good to operate as a provider of commercial mobile radio services in Vermont*, Order of 10/30/02 at 4.

II. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board ("Board") of the State of Vermont that:

1. Pursuant to 30 V.S.A. Sections 208 and 209(a)(3), an investigation is opened to examine the complaint of Mark Tucker regarding the INpulse Plan offered by Verizon Wireless in Vermont. This investigation shall initially be limited to examining whether the Board has the requisite jurisdiction to consider and grant any relief in regard to Mr. Tucker's complaint.

2. Pursuant to 30 V.S.A. Section 8, June E. Tierney, Esq., is appointed to serve as the Hearing Officer in this proceeding.

3. Pursuant to 30 V.S.A. Section 10, a Prehearing Conference will be held in this matter on Thursday, January 27, 2011, commencing at 1:30 P.M., at the Public Service Board Conference Room, located on the 4th floor of the People's United Bank Building (formerly known as the Chittenden Bank Building) at 112 State Street in Montpelier, Vermont.

Dated at Montpelier, Vermont, this 13th day of January, 2011.

<u>s/ James Volz</u>)	
)	
)	PUBLIC SERVICE
<u>s/ David C. Coen</u>)	
)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: January 13, 2011

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)